International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge No. 193, AFL-CIO *and* Capitol Boiler Works, Inc. and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge No. 518, AFL-CIO. Case 5-CD-269

September 15, 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Capitol Boiler Works, Inc., herein called the Employer, alleging that International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge No. 193, AFL-CIO, herein called Respondent or Local 193, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge No. 518, AFL-CIO, herein called Local 518.

Pursuant to notice, a hearing was held before Hearing Officer Mark M. Carissimi on May 13, 1982. Respondent and the Employer appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Local 518 declined to intervene.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Virginia corporation with its principal place of business in Fairfax, Virginia, is engaged in the business of repair and maintenance, fabrication, and replacement of boilers, smokestacks, boiler breeching, and associated equipment. During the past year, the Employer had gross revenues in excess of $1 million and it purchased and received goods from outside the State having a value of $50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Respondent and Local 518 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer services boilers in southern Maryland, northern Virginia, and the District of Columbia. Although Local 518 has represented the Employer's employees since the 1930's, their last collective-bargaining agreement expired in 1981. The Employer has no collective-bargaining agreement with Local 193. On April 2, 1982, the Employer was awarded a contract by the Potomac Electric Power Company (PEPCO) to replace a 30-foot section of fabricated sheet metal which extends from a boiler to a smokestack at its Dickerson, Maryland, power plant. The Employer planned to use about four employees.

According to the contract, the work was to commence on April 12, 1982, and be completed during the first week of May. On April 9, an agent of Local 193 informed the Employer that its position was that its members had exclusive jurisdiction to do boiler repair work at utility companies in that geographical area, and that it would picket the jobsite if the Employer used its regular employees instead of employing Local 193 members. On April 12, 1982, Local 193 set up a picket line at the Dickerson plant. Although some of the Employer's employees crossed the picket line that day, the Employer has not attempted to return to the jobsite since that date.

B. *The Work in Dispute*

The work in dispute involves the replacement of a 30-foot section of fabricated sheet metal in a boiler at the PEPCO facility located in Dickerson, Maryland.

C. *The Contentions of the Parties*

The Employer contends that the expired agreement with Local 518 allows it to use its regular complement of employees to perform the disputed repair work, because the contract grants Local 193 exclusive jurisdiction only over new construction in utility plants. Arguing that its employees have

performed similar work at the Dickerson plant during 1980 and 1981, the Employer asserts that these employees have the requisite skills to perform the work efficiently.

Local 193 asserts that no jurisdictional dispute exists because Local 518 has disclaimed jurisdiction over the disputed work and there is no evidence that the Employer's employees claim the work. It also contends that the expired agreement between Local 518 and the Employer indicates that Local 518 does not have jurisdiction over the work.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute. It is uncontested that on April 12, 1982, Local 193 set up a picket line at the Dickerson PEPCO plant jobsite in an effort to restrict the Employer's employees from performing the disputed work. This picket line clearly constitutes a threat of serious economic harm, and was intended to force the Employer to assign the work to members of Local 193, rather than to the employees of the Employer, represented by Local 518, to whom the work had been assigned.

We also find no merit to the claim of Local 193 that no dispute exists because the Local 518 president, Nisson, testified that the Union and its members disclaim the disputed work. On the contrary, we find that the employees represented by Local 518 have demonstrated their desire to continue to perform this work. Evidence in support of the employees' desire to finish this work includes testimony at the hearing whereby two employees testified that Local 193 merely has jurisdiction over the wages and working conditions provided for employees working in this geographical area, as well as the fact that some of the employees crossed the picket line on April 12, 1982. Therefore, we accord no weight to the disclaimer offered by the president of Local 518.[1]

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

[1] See *International Brotherhood of Electrical Workers Local No. 610 (Landau Outdoor Sign Company, Inc.)*, 225 NLRB 320 (1976).

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[2] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[3]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

Local 193 and the Employer have not executed a collective-bargaining agreement covering the employees involved in this dispute. On November 16, 1981, the collective-bargaining agreement between the Employer and Local 518 expired. This agreement included language delineating the jurisdiction between Local 518 and several other Boilermakers Locals. Local 193 argues that it has exclusive jurisdiction over the boiler work at the Dickerson utility plant. However, article 4, section 3, subparagraph 3, of the expired contract merely states that Local 518 "does not have jurisdiction over *new construction* in Utility and Industrial Plants. . . ." (Emphasis supplied.) The expired contract further provides that, when Local 518 members are performing fieldwork within the jurisdiction of Local 193, the employees must be paid the wages and working conditions established by Local 193 for a series of work classifications, one of which is fieldwork at utility power plants.

Based on this expired agreement, members of Local 518 are not excluded from performing field repair work on utility power plants, as long as the prevailing wages and working conditions are extended to Local 518 members.

However, since the contract is expired and it does not prohibit members of Local 518 from performing the disputed work, we find that this factor is of no value in determining the dispute before us.

2. Company and industry practice

On several occasions during 1980 and 1981 the Employer has been awarded contracts to perform similar work at the Dickerson PEPCO plant as well as other utility plants in the area, and it has invariably used its own employees to perform this work. Consequently, company practice is a factor which favors an award of the disputed work to the

[2] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[3] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

Employer's employees who are represented by Local 518.

Regarding industry practice, Local 193 presented evidence that indicates the majority of employees who perform fieldwork of the disputed nature in this geographical area are members of Local 193. Noting that the Employer also presented evidence that Local 518 members have performed similar work in this geographical area, we are of the opinion that the factor of industry practice is not determinative here.

3. Relative skills

According to the evidence presented during the hearing both the members of Local 193 and the members of Local 518 possess the requisite skill for performing this work. Therefore, this factor is not determinative here.

4. Economy and efficiency of operation

Since the members of both Locals have similar experience and identical standards for performing this work, this factor is not of value in determining the dispute.

5. Union agreements

According to Henry Gertz who is the assistant director, construction division, for the International Boilermakers Union, the executive council has not made an official determination in this conflict, but Gertz testified that the council's position is to grant Local 193 jurisdiction over all maintenance and construction work at utility power plants.

Although we do not consider formal determinations from international unions on these matters to be binding unless the parties have expressly agreed otherwise, we would further note that no formal determination has been made by the International Boilermakers Union. Consequently we find this factor of no value in determining this dispute.

6. Employer preference

On several occasions during 1980 and 1981 the Employer assigned similar work to its employees and has currently assigned the disputed work to its employees. The record further indicates that the Employer is satisfied with the assignments and maintains a preference for an assignment of this work to its employees who are represented by Local 518.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the Employer's employees who are represented by Local 518 are entitled to perform the work in dispute. We reach this conclusion relying on the company practice and preference. In making this determination, we are awarding the work in question to employees who are represented by Local 518, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Capitol Boiler Works, Inc., who are represented by International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge No. 518, AFL-CIO, are entitled to perform the disputed work at the Dickerson, Maryland, PEPCO plant.

2. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge No. 193, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Capitol Boiler Works, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Lodge No. 193, AFL-CIO, shall notify the Regional Director for Region 5, in writing, whether or not it will refrain from forcing or requiring the employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.